

IRS Extends Continuity Safe Harbor for Offshore Projects and Federal Land Projects

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On December 31, 2020, the IRS issued Notice [2021-5](#), which provides relief for the impact of delays on qualified facilities and energy property projects being constructed offshore or on federal land with respect to the “beginning of construction” requirements for renewable energy projects eligible for the production tax credit (PTC) or investment tax credit (ITC).

Notice 2021-5 modifies the guidance provided in Notices [2013-29](#), [2013-60](#), [2014-46](#), [2015-25](#), [2016-31](#), [2017-04](#), [2018-59](#), [2019-43](#), and [2020-41](#) (Prior Notices). The Prior Notices provide two methods by which a taxpayer can satisfy the beginning of construction requirement for the PTC and the ITC: (1) starting physical work of a significant nature (Physical Work Test) or (2) incurring 5% or more of the costs of the facility or energy property (5% Safe Harbor). Both methods require that a taxpayer make continuous progress toward completion once construction has begun (Continuity Requirement). The Prior Notices also provide a safe harbor (Continuity Safe Harbor) pursuant to which the Continuity Requirement is deemed to be satisfied if a taxpayer places the qualified facility or energy property in service by the end of a calendar year that is no more than four calendar years (or five calendar years for qualified facilities or energy property if the construction began in 2016 or 2017) after the calendar year during which construction began.

Notice 2021-5 extends the Continuity Safe Harbor to 10 years for qualified facilities or energy property projects (1) that are located in inland navigable waters of the United States, are located in any coastal waters of the United States, or more than 50% (based on relative value or area) of which will be placed in service on land owned or controlled by the United States, and (2) that will require the construction of one or more high-voltage transmission lines to connect the facility or energy property to the grid.

For more information, contact any of the attorneys listed in this advisory.

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